IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 38563 of 2003(N)

E.P.116/89 IN OS 283/73 OF MUNSIFF COURT, CHENGANNUR

PETITIONER:

KUTTIAMMA KAMALAMMA, KALLOTTU
PUTHENVEEDU, KODUKULANJI, KARODU MURI,
VENMONY VILLAGE, CHENGANNUR TALUK.

BY ADV. SRI.V.N.ACHUTHA KURUP

RESPONDENTS:

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1. FR.M.K.MATHEWS MALLASSERIL,
KODUKULANJI KARODU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK.

2. KOSHY JOHN, DO.

3. KOSHY PHILIP, DO.

4. KOZHY JACOB, DO.

5. KOSHY MARIAMMA, DO.

BY ADV. SRI.K.K.JOHN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, ALONG WITH CRP 2118/03 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF ORDER IN CRP.2543/2000 DT.18/2/03 OF HONOURABLE HIGH COURT

EXT.P2: COPY OF MAHAZAR AND COMMISSION REPORT DT.7/7/03 IN EP.116/89 IN OS.283/1973 OF MUNSIFF COURT, CHENGANNUR

EXT.P3: COPY OF OBJECTION FILED BY PETITIONER TO EXT.P2 BEFORE THE MUNSIFF COURT, CHENGANNUR

EXT.P4: COPY OF ORDER IN EP 116/89 IN OS 283/73 DT.30/8/03 OF MUNSIFF, CHENGANNUR

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 38563 OF 2003
and
C.R.P.NO.2118 OF 2003

Dated 8th January 2007

J U D G M E N T

Revision petitioners are defendants, judgment debtors 2 to 5 in O.S.283/1973 on the file of Munsiff court, Chengannur. Respondent is the plaintiff. Plaintiff is petitioner in W.P.C.38563/03. Judgment debtors are respondent therein. A decree for redemption and recovery and possession was passed on 30/9/1988, whereunder decree holder was allowed to redeem the mortgage over plaint schedule property and to recover possession of the mortgaged property. Decree provides that quantum of value of improvements is to be decided in the execution proceedings. E.P.116/89 was filed by respondent for execution of the decree. Executing court as per original order fixed the value of improvement at Rs.55,274.15 and directed respondent to deposit the same. Petitioners herein challenged that order before this court in C.R.P.2543/2000. This court set aside the order of

executing court and remanded the case for fresh disposal. This court found that on going through Ext.C1 to C4 reports, it is clear that Commissioner has not properly valued the coconuts trees applying the principles provided under Sections 7, 11 and 13 of the Tenancy Improvements Act, 1958. It was also found that quantity of timber was also not correctly shown by the Commissioner. After remand, at the instance of judgment debtors, as per order in E.A.67/03 executing court appointed Sri.A.V.Rajendran, timber merchant who was examined as CW2 to assist CW1 the commissioner. Commissioner thereafter submitted a report re-assessing the value of improvements with all the details. Judgment debtors and decree holders filed objections to the report. According to the decree holder value of improvements assessed by the Commissioner is excessive. According to the judgment debtors value is far less. Commissioner was examined as CW1 and A.V.Rajendran as CW2 on the side of judgment debtors. Additional reports were marked as Exts.C6 and C7. Learned Munsiff on the basis of evidence fixed the value of improvements at Rs.1,34,398/- and directed decree holder to deposit the amount and held that on such deposit decree holder is entitled to take delivery of the property.

Challenging that order judgment debtor filed C.R.P.2118/03. Contending that value of improvements directed to be deposited is excessive, decree holder filed W.P.C.38563/03 under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Arguments of learned counsel appearing for revision petitioners is that report originally submitted by the Commissioner was found to be unsatisfactory and insufficient to fix the value of improvements and case was remanded and executing court appointed a special commissioner along with the same advocate commissioner to assess the value of improvements. It was argued that evidence of CW2 establish that special commissioner had given measurements and value of the timber trees to the commissioner which was denied by the commissioner and commissioner fixed the value of improvements not on the basis of value of timber trees furnished by CW2 but after enquiring with other alleged timber merchants without disclosing their names and in such circumstances, executing court should not have accepted the value of improvements furnished by the commissioner in Exts.C6 and C7 and instead should have directed the

commissioner to submit a further report assessing value of improvements properly. Learned counsel appearing for decree holder argued that commissioner has originally valued the improvements only at Rs.55,274.15 and as per Exts.C6 and C7 value was enhanced at Rs.1,34,398/- which is far in excess than the actual value and therefore value of improvements fixed is higher than the value of improvements. Learned counsel appearing for decree holder also pointed out that in view of the earlier order of the executing court, decree holder deposited Rs.55,376/- on 9/8/1999 and Rs.41,060/- on 3/10/2006 and even though suit was filed in 1973 and decree for redemption was passed in 1988 decree holder could not enjoy the fruits of the decree and in such circumstances, revision is to be dismissed.

4. On hearing learned counsel appearing for petitioners and respondent and on going through the records including Exts.C6, C7 and depositions of CW1 and CW2 it is clear that after remand, at the instance of judgment debtors a special commissioner, CW2, was appointed by the executing court to assist the commissioner. Order in E.A.67/03 does not show that commissioner has to obtain opinion of the expert, on the value of the timber as canvassed by petitioners. Neither

in the affidavit filed by judgment debtors nor in the petition nor in the order passed by the executing court, it was provided that special commissioner has to file a report either to the court or before the commissioner valuing the improvements. Appointment of the expert in such circumstances, could only be to assist the commissioner. Assistance intended could only be to measure and fix the cubic feet of the timber trees standing in the decree schedule property. Exts.C6 and C7 and evidence of Cws.1 and 2 establish that commissioner had taken out measurements with the assistance of CW2 and details of measurements were recorded at the time of inspection in the presence of the parties. Assistance of the expert contemplated was only to that extent and not to fix the value of timber trees. Though it was vehemently argued by that counsel appearing for revision petitioners that from the evidence of CW2 it is clear that CW2 had given value of timber trees, which is higher than the value assessed by the commissioner to the Commissioner in the absence of a direction from executing court, commissioner was not expected to fix the value assessed by the special commissioner. Neither Exts.C6 and C7 nor value of improvements fixed by executing court could be

interfered on that ground.

5. Evidence of CW1 commissioner with the report and order passed by executing court, it is clear that value of timber trees was fixed by commissioner after assessing the value collected from saw mill owners. Case of judgment debtors is that value of timber trees prevailing at that time was much more than what was assessed. If that be, petitioner could have produced relevant and necessary documents to establish the actual value and or could have examined saw mill owners to prove that value was more than what was assessed by the commissioner. In the absence of any such evidence, I do not find any reason to interfere with the order of executing court holding that commissioner was valued the timber trees correctly. It is the same case with the value assessed by the commissioner for other improvements.

6. Learned counsel appearing for revision petitioners pointed out that four anjili trees had fallen. Revision petitioners have filed I.A.2820/06 to appoint a commission to sell the properties and to keep the sale proceeds in court. If petitioners are not satisfied with the value given for those anjili trees, they are at liberty to remove the fallen trees in which

case value of those timber trees shall not be disbursed to judgment debtors by the executing court. Even though objection was also raised with regard to the value assessed by the Commissioner for coconut trees, executing court on the materials rightly found that value has been rightly fixed by commissioner. On going through the order passed by executing court, I find no illegality or irregularity warranting interference in exercise of revisional jurisdiction or supervisory powers of this court. Revision petition and writ petition are dismissed. Executing court is directed to proceed with the executing proceedings, expeditiously without further delay.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.